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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,694

11/17/2003

Lowell R. Wedemeyer

CheekAir

5398

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EXAMINER

JACKSON, BRANDON LEE

ART UNIT

PAPER NUMBER

3772

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/714,694	<b>Applicant(s)</b> WEDEMEYER, LOWELL R.	
	<b>Examiner</b> BRANDON JACKSON	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 1-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This office action is in response to Appeal Brief filed 7/7/2008. After an Appeal-Conference held 9/11/2008, the Office has found Applicant's arguments to be persuasive and is re-opening prosecution. However, a new art rejection is disclosed below.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-34, 37-38, 40-41, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Liou (US Patent 6,273,713). Liou discloses a cheek pouch anchor (fig. 3) fully capable of being placed in only one of a user's cheek pouches, comprising a spring element (8) that compresses as the user's jaw closes (col. 1, lines 65-67) and resiliently expands to form and maintain a bridge across a user's inter occlusal space and a user's lip opening formed as a user's jaws and lips open and close. The spring element is fully capable of receiving joinder to a work piece, via couple a dental suction hose to the anchor (fig. 3). It is fully capable of having structural strength, when joined to a work piece, such as a dental suction hose, to maintain placement within a user's cheek pouch while a user's lips and jaws open and close. The cheek pouch anchor is formed of at least metal (col. 2, lines 42-43) and is a resilient filament. The anchor (fig. 3) is fully

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capable of carrying a substance if the user chooses to apply one to the anchor (fig. 3) and the substance is fully capable of being released within the user's mouth through contact between the anchor and the interior of the user's mouth. Some substances commonly placed upon medical device and sanitizing coatings or flavoring coating, as taught in Diaz (US Patent 4,041,937).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 35 and 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liou (US Patent 6,273,713) in view of Rodriguez (US Patent 6,428,316). Liou substantially discloses the claimed invention; see rejections to claims 33 and 42 above. Liou fails to disclose a conduit for fluid. However, Rodriguez discloses a conduit for fluid (17) that can be coupled to Liou cheek anchor (fig. 3) by inserting it through the

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spring element (8) or by merely resting it upon the cheek anchor (fig. 3), while being at least partially in the cheek pouch. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Liou device with the fluid conduit, as taught by Rodriquez, in order to remove saliva from the user's mouth during dental procedures.

Claims 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liou (US Patent 6,273,713) in view of Seyler (US Patent 4,889,327). Liou substantially discloses the claimed invention; see rejection to claim 33 above. Liou fails to explicitly state and it cannot be discerned from the figures whether spring element (8) comprises a plurality of loops or merely one. However, it is well known in the art that torsion springs can vary the number of loops in order to vary the force applied by the spring. Moreover, Seyler teaches a torsion spring (30) comprising a plurality of loops (31). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Liou device to have a plurality of loops, as taught by Seyler, in order to vary the force applied by the device for specific users. The spring element Liou/Seyler device has a span size and are adjustable such that is the span size of one of the loops is increased or decreased, it increases or decreases the span size of an adjacent loop; thereby enabling adjustment of the whole spring element span size.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/

Supervisory Patent Examiner, Art Unit 3772